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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,810	11/10/2003	Satoshi Mizutani	20050/0200469-US0	5412
7278	7590	05/28/2008		
DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			EXAMINER KIDWELL, MICHELE M	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 05/28/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/705,810	Applicant(s) MIZUTANI ET AL.	
	Examiner Michele Kidwell	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 6,7,11-13,17,18 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-5,8-10,14-16 and 19-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date | 6) <input type="checkbox"/> Other: _____ |

4/6/04;6/9/04;7/7/04;2/25/05;1/16/08;1/30/08;2/7/08;2/8/08;4/3/08;4/29/08.

DETAILED ACTION

Election/Restrictions

Applicant's election of Species 6 in the reply filed on February 26, 2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 6 – 7, 11 – 13, 17 – 18 and 22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 – 5, 8 – 10, 14 – 16 and 19 – 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 1, the claim recites that the absorbing sheet portion is on the interlabial pad in lines 3 – 4. It is unclear how the absorbing sheet portion can be on the interlabial pad when the absorbing sheet portion is the interlabial pad as set forth in lines 1 - 2 of the claim. Correction and/or clarification are required.

Claim 4 recites the limitation "the absorbent body for contacting ostium vaginae" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 15 recites the limitation "the absorbent body for contacting ostium vaginae" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 2, 5, 8 – 10, 16 and 19 – 21 are rejected under 35 U.S.C. 102(b) as being anticipated by CA 2277728.

With reference to claim 1, CA 2277728 (hereinafter '728) discloses an interlabial pad for fitting between labia, comprising: an absorbing sheet portion (25) on a body-facing side of the interlabial pad and a support sheet portion (16) backing the absorbing sheet portion, wherein the absorbing sheet portion comprises an absorbent body (40) for contacting a discharge opening of body fluid, the absorbent body having a stick shape or a strip shape (figures 1A and 1B), and the absorbent body being an independent absorbent body (figure 1B) and an absorbent body (14) for contacting an inner wall of the labia, the absorbent body having a flat shape (figure 1b) and the absorbent body being an independent absorbent body (figure 1B) wherein the absorbent body for contacting a discharge opening of body fluid is disposed

substantially along a center line of the body side surface of the absorbent body for contacting an inner wall of the labia as set forth in figure 1A.

As to claim 2, '728 discloses an interlabial pad wherein each of the absorbent body for contacting a discharge opening of body fluid and the absorbent body for contacting an inner wall of the labia is covered by respective, independent cover sheets (25,16) as set forth in figure 1B.

Regarding claims 5 and 16, see figure 1A with connected portions shown as 50 and center portion not connected.

With reference to claims 8 – 10 and 19 – 21, see page 2, lines 10 – 13 and page 3, lines 5 – 7.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 – 4 and 14 – 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over CA 2277728.

The difference between '728 and claim 3 is the provision that a bonding area ratio between the two absorbent bodies falls within a range between 2% and 80%.

'728 teaches one absorbent bonded to the other through adhesive surfaces 50 as set forth in the figures.

While no explicit measurement is recited with respect to the bonding area ratio, adhesive surfaces (50) are shown at either end of the pad (20) in figure 1A.

The examiner contends that either end may be considered as a bonding area. In such a case, one can reasonably presume that the bonding area ratio falls within the claimed range because either adhesive surface (50) would have to cover at least half of pad (20) to be considered to have a bonding area ratio of 50%. As shown in figure 1A, adhesive surface (50) is considerable less than half (50%) but greater than at least 2%, especially depending upon which portions of corresponding areas are being considered in order to meet the claimed limitations.

With reference to claim 4, the examiner contends that the structure of '728 can be reasonably assumed to meet the claimed limitations as the structure of '728 and that of the claimed invention are identical.

Nevertheless, it would have been obvious to one of ordinary skill in the art to modify the stiffness of the article as desired because '728 recognizes the advantages and benefits associated with providing flexibility to the article as set forth on page 5, lines 34 – 36.

Response to Arguments

Applicant's arguments with respect to claims 1 – 5, 8 – 10, 14 – 16 and 19 – 21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michele Kidwell/
Primary Examiner, Art Unit 3761